92-824

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.

Petitioner,

versus

RONALD RUFFIN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where a trial court orders only a very limited injunction after a Title VII trial in which a plaintiff sought across-the-board injunctive and monetary relief for numerous claims of employment discrimination, is the plaintiff a "prevailing party" within the meaning of 42 U.S.C. § 1988 and this Court's decision in Garland?*

2. Where only a very limited injunction has been ordered, does the fact that it may later be enforced in a contempt proceeding satisfy this Court's requirement for a "material alteration" of the litigants' legal relationship within the meaning of this Court's decision in Garland?

3. Is an employer's failure to appeal a trial court's limited injunction, its findings of fact or legal conclusions an appropriate factor for reversing a trial court's decision to deny an attorneys' fee award?

*Texas State Teachers Ass'n v. Garland, 489 U.S. 782 (1989)

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OPINIONS BELOW

Ronald Ruffin sued his employer claiming numerous instances of race discrimination in his employment. (Pet. App. A-1 - A-7). Finding only a very limited entitlement to relief, the Trial Court denied an attorneys' fee award. (Pet. App. A-33 - A-34). Ruffin appealed only the denial of attorneys' fees. (Pet. App. A-38). The Eleventh Circuit reversed the Trial Court's denial of attorneys' fees and rejected Petitioner's argument that the Trial Court's nominal injunctive relief was only a technical or de minimis victory. (Pet. App. A-37 - A-58). The Appeals Court's theory was that any court-ordered relief that could subsequently be enforced through a contempt proceeding constitutes the necessary material alteration mandated by this Court in Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782 (1989). There, the Supreme Court made clear that a party must achieve more than merely a technical or de minimis victory before an attorneys' fee is statutorily authorized.

The Appeals Court concluded Ruffin met the statutory requirements for a fee award.

JURISDICTION

The opinion and judgment of the Court of Appeals was entered on August 20, 1992. (Pet. App. A-37 - A-58). This petition for certiorari was filed in less than 90 days and is timely. The Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case arises under the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5k and the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. § 1988 (Pet. App. A-59 - A-61).

STATEMENT OF THE CASE

At the time of trial, Ruffin was a mechanic in Petitioner's tractor trailer repair shop. In his Title VII

Complaint he alleged that he had been repeatedly discriminated against because of his race, black, by management's failure to grant him various promotions, several wage increases, and more desirable job assignments. He also claimed he had suffered numerous instances of discriminatory discipline and racial harassment from coworkers "without any corrective action being taken [by management]" (emphasis added). (Pet. App. A-3 - A-5). Ruffin's claims covered the years 1987, 1988, 1989, 1990 and 1991.

Following a two-day trial, the Honorable Sam C. Pointer, Jr. ruled in favor of Defendant on all of Plaintiff's claims for discriminatory promotions, wage increases, discipline and job assignments. The Trial Court awarded no monetary damages; it did not require the employer to promote him, change his job classification, alter his job assignments, give him additional seniority, increase his pay, benefits, pension, or, remove or modify any discipline

against him.[1] Similarly, the court did not grant the additional across-the-board injunction sought in Ruffin's Complaint. (Pet. App. A-6, Prayer for Relief, paragraph 2).

The Court expressed concern about an isolated coworker harassment incident "back during that period of time [1987]." (Pet. App. A-26). The Trial Court's description of the 1987 incident reveals the isolated nature of this incident:

> There is an incident that occurred in or around the close of the year 1987 certainly as to which this Court would be concerned and is concerned. An incident in

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[1]Plaintiff's Complaint sought numerous injunctive and monetary remedies including a court order:

> requiring the defendant to make the plaintiff whole by awarding him the position he would have [sic] occupied in the absence of race discrimination, back pay (plus interest), compensatory damages, lost seniority, benefits and loss of pension.

Pet. App. A-6.

which a noose was prepared using heavy rope by white mechanics and ultimately the noose was put around Mr. Ruffin's neck by one of these white mechanics. These are coworkers and not supervisors.

Mr. Ruffin made a complaint to management about what had occurred and management did immediately make an inquiry investigation into it. Management got conflicting stories with the whites who were involved having indicated that, number one, it had not originally been prepared in any way as something directed to Mr. Ruffin and that in any event it was a matter simply of a joke and no offense taken in the eyes of the whites and that Mr. Ruffin, himself, had engaged in some horseplay or joking use of the noose at the same time. Mr. Ruffin's version, of course, was different as to what happened and it has been different in this trial.

Management, confronted with the two different stories, without making a decision as to which story or which version to believe, said that certainly an apology was due to Mr. Ruffin from the whites who were involved and indeed that apology was given. So far as management was aware, that had satisfied Mr. Ruffin. Obviously it did not satisfy him, but at least in terms of responding later to management, he did not indicate that he was still unhappy with what had occurred or what action management

> had taken or failed to take of a more severe nature.

(Pet. App. A-26 - A-27)(emphasis added). The Trial Court emphasized that since 1987, the Company had taken steps designed to eliminate such incidents:

> Since that incident in late 1987 it's clear to the Court that management has taken a more active role in reducing the amount of offensive language and joking that had been going on prior to that time. . . .
>
> Management has taken disciplinary action since that time with respect to individuals, where it was reported to management, that these things had occurred. [I]t is clear to the Court based on the evidence presented that management does view that as inappropriate behavior and is prepared to impose appropriate discipline when called to its attention.

(Pet. App. A-27 - A-28)(emphasis added). Although Ruffin presented the Court with other harassment claims allegedly directed toward him after the 1987 noose incident, the Trial Court did not find any Title VII violations regarding any of these occurrences. For

example, the Trial Court rejected Ruffin's racial claim that his coworkers frequently referred to him as "Rondo." (Pet. App. A-25 - A-26).

The Trial Court issued a very narrow injunction requiring only that the employer be "more affirmative and more aggressive" in its efforts to create a non-offensive work environment in its shop area. The Court made clear the limited scope of its injunction:

> I am going to enjoin the company to take active steps to reduce and eliminate the racial joking and slurs and episodes in the shop area. The wording of an injunction of this sort is very difficult. And it is, as I say, clear to me that the company has attempted or started in that area, has undertaken from time to time disciplinary action. But I think the Court is essentially requiring now, given this evidence, the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop.

(Pet. App. A-32 - A-33)(emphasis added). Significantly, this nominal injunction did not require Defendant to implement any new policy or procedure. It did not

require management to do any specific act regarding Ruffin or to change anything it had already done to address any coworker harassment incident. It only required the Company to make more aggressive efforts to create a non-offensive work environment.

The Trial Court denied Ruffin's request for attorneys' fees and summarized its decision as follows:

> The plaintiff, I'm sure must feel like he has lost in the case. I think it is fair to say in general he has lost in this case even though the Court does find on this area an entitlement to relief.

(Pet. App. A-33). Ruffin appealed only the trial court's denial of attorneys' fees. The Eleventh Circuit decided Judge Pointer had applied the correct legal standard in evaluating Ruffin's request for attorneys' fees; nevertheless, it concluded the Trial Court had abused its discretion in denying an attorneys' fee award. (Pet. App. A-58).

The Appeals Court decided Ruffin had met the Garland standards for an attorneys' fee award simply by obtaining some injunctive relief. The Appeals Court outlined its analysis as follows:

> By virtue of the court's grant of injunctive relief, Great Dane is now under a legal obligation to correct the racist behavior at its jobsite. Accordingly, Ruffin may now protect his rights through a civil contempt proceeding in the event that Great Dane's compliance with the court's injunction is not forthcoming. Given the alteration of Ruffin's legal rights and Great Dane's legal obligations that resulted from the court's grant of injunctive relief, there is no question that Ruffin prevailed on this issue before the district court, or that, consequently, he satisfied the Garland standard and is entitled to an award of attorneys' fees.

(Pet. App. A-50 - A-51)(emphasis added)(citations omitted). Thus, the Appeals Court concluded that where a remedial obligation exist vel non, a plaintiff qualifies for an award of attorneys' fees.

The Appeals Court's analysis omits the key inquiry under Garland: Does the judicial relief materially alter the parties' legal relationship? By failing to address this question, the Appeals Court ignored a primary requirement in Garland; i.e., that a material alteration of the litigants' legal relationship result from the litigation. The Appeals Court decision reflects an erroneous interpretation of Garland that any remedial order at all, regardless of how little it impacts the parties' conduct toward each other, constitutes a "material alteration."

The Appeals Court decision was not premised solely on a restricted view of the Garland requirements. The Appeals Court further explained its decision by holding that the Petitioner's failure to appeal the Trial Court's factual findings, legal conclusions or remedy somehow confirmed that the narrow injunction here constituted a "material alteration" under Garland. The Appeals Court explained:

> Appellee [employer] does not challenge the award of injunctive relief, nor does it suggest that the court's finding that Great Dane has failed to address adequately the problem of jobsite racism is clearly erroneous. Given the district court's unchallenged findings, we cannot hold that the court's injunction did not materially alter the relationship . . . .

(Pet. App. A-57)(emphasis added). This purported justification provides no relevant consideration for evaluating whether a material alteration has occurred. Carried to its logical end, this backward reasoning penalizes a party for not appealing the merits of a case in which it scored a substantial victory if there is any minor injunctive relief ordered by a court. Such a result could generate appeals even where a trial court's injunction in no meaningful way changes the parties' relationship, notwithstanding the fact that a defendant really was the "prevailing party" in the case. In such circumstances, compliance with a nominal injunction is a far easier thing to bear rather than the costs of a protracted appeal.

REASONS FOR GRANTING CERTIORARI

1. The Appeals Court Failed To Apply The Standards Set Forth In Garland, 489 U.S. 782 (1989).

A plaintiff has crossed the statutory threshold to a fee award only when he has succeeded ". . . 'on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit' . . . ." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)) (emphasis added). However, to achieve success on "any significant issue" means more than simply a judicial determination that a violation has occurred. A plaintiff must obtain "some relief on the merits," Garland, 489 U.S. at 790 (citing Hanrahan v. Hampton, 446 U.S. 754, 757 (1980))(emphasis added). Under Garland, such "relief" must not only "change the legal relationship between the plaintiff and the defendant . . . ." (489 U.S. at 792); it must also be a material change in their relationship:

> The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute.

489 U.S. at 792-93 (emphasis added). Thus, where there has been no legal relationship change or, where only a minor or de minimis alteration of the parties' relationship would result, an attorneys' fee is not authorized under Title VII or § 1988.

A remedy which is only technical or de minimis would fail to satisfy even the "generous formulation" adopted in Garland:

> [A] technical victory may be so insignificant, and may be so near the situations addressed in Hewitt and Rhodes, as to be insufficient to support prevailing party status . . . . Where the plaintiff's success on a legal claim can be characterized as purely technical or de minimis, a district court would be justified in concluding that even the "generous formulation" we adopt today has not been satisfied. (quoting Nadeau v. Helgemoe, 581 F.2d at 279, n.3).

489 U.S. at 792 (emphasis added). To be "so near the situations" represented by Hewitt and Rhodes[2] cannot be limited only to cases where plaintiffs receive absolutely no benefit from litigation. In Ruffin, the Eleventh Circuit has failed to apply this part of Garland by its misdirected focus upon the mere availability of an enforcement mechanism.[3]

Many cases, like the present one, qualify as de minimis or technical victories. District Judge Pointer was

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[2]Hewitt v. Helms, 482 U.S. 755, 107 S.Ct. 2672 (1987); Rhodes v. Stewart, 488 U.S. 1, 109 S.Ct. 202 (1988).

[3]The Eleventh Circuit's underlying rationale in Ruffin ignores the analytical principles required by Garland, even while purporting to follow Garland's analytical framework. The Supreme Court in Garland focused on how a remedy impacts the parties' relationship, not what could happen if a party elects to ignore the remedy. The Eleventh Circuit's decision that Ruffin should be a prevailing party simply because injunctive relief could later be enforced through a contempt proceeding does not begin to address the correct question. Any remedy, injunctive or otherwise, would certainly satisfy the Eleventh Circuit's elementary test.

certainly correct, in light of the nominal relief ordered in this case, in finding that Ruffin did not qualify as a prevailing party. The court's conclusion that Plaintiff had "lost in this case" (Pet. App. A-35), is entirely consistent with Garland's standards for denying an attorneys' fee. Although a minimal injunction was ordered in this case, the limited scope of the injunction fully supports the Trial Court's decision that an attorneys' fee was not appropriate. Compared with the laundry list of injunctive and monetary remedies Ruffin actually sought in this litigation (Pet. App. A-6 - A-7), the court's minimal injunction clearly constitutes, at most, only a minor change in the Company's relationship with him.

On the other hand, the Eleventh Circuit's misdirected analysis is inconsistent with the Supreme Court's rationale in Hensley. There, this Court noted:

> The result is what matters . . . . Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to

> bring a lawsuit or whenever conscientious counsel tried the case with devotion and skill. Again, the most critical factor is the degree of success obtained.

461 U.S. at 435-436 (emphasis added). Clearly, this Court's recognition of "degree[s] of success" confirms that the specific circumstances of Hewitt and Rhodes do not represent the only two examples of technical or de minimis victories in which Congress expected trial courts to deny attorneys' fees.

In Garland, this Court demonstrated the analysis it now requires before an attorneys' fee is allowed. This Court cited with approval examples of purely technical or de minimis successes which failed to qualify a plaintiff as a prevailing party. Each example represents a judicial result greater than those achieved in Hewitt and Rhodes. In fact, in each case, the plaintiff achieved a materially more significant victory than resulted in this case. For example, in Garland itself, the trial court invalidated a

school district's rule requiring a school principal's approval in advance of teachers' meetings on school grounds after regular school hours. 489 U.S. at 786-87. The plaintiffs clearly succeeded in getting judicial relief requiring the defendants to stop using this rule. Nevertheless, this Court recognized that this example of a limited judicial victory would have been insufficient to recognize them as prevailing parties for purposes of an attorneys' fee. "If this had been petitioners' only success in the litigation, we think it clear that this alone would not have rendered them 'prevailing parties' within the meaning of § 1988." 489 U.S. at 786-87.

Here, Judge Pointer's narrow injunction did not require Petitioner to stop doing anything at all; in fact, it only required Petitioner to increase the types of things which, on its own initiative, it had already begun doing to reduce incidents of coworker harassment. It is significant that the injunction here requires no particular steps or any

new policy from management. Clearly, the court believed that this very mild injunction was sufficient in light of the factual findings and legal conclusions it had made. Additionally, however, it also demonstrates how little success Ruffin can claim in this case, especially when the narrow injunction is compared to the numerous injunctive and monetary remedies Ruffin sought through this litigation. (Pet. App. A-5 - A-6).

Next, the Supreme Court in Garland also cited with approval New York City Unemployed & Welfare Council v. Brezenoff, 742 F.2d 718 (2d Cir. 1984)(Brezenoff II)[4], as another example that every victory by a plaintiff does not justify "prevailing party" status. In that case, plaintiffs obtained a court order requiring defendants to modify one out of four regulations challenged by the lawsuit. See

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[4]See also, New York City Unemployed and Welfare Council v. Brezenoff, 677 F.2d 232 (2d Cir. 1982) (Brezenoff I).

Brezenoff I, 677 F.2d at 235. This court-ordered modification of defendants' regulation achieved one of the goals for the litigation; it allowed plaintiffs' greater access to welfare patients. Nevertheless, this Court endorsed the Second Circuit's holding that "[t]he district court's denial of attorney's fees in this instance is reasonable in relation to the results obtained." 742 F.2d at 724, n.4 (quoting Hensley v. Eckerhart, 461 U.S. at 438, 103 S. Ct. at 1942.); Garland, 489 U.S. at 792.

Clearly, as shown by Bresenoff II, every judicial "remedy" does not justify an attorneys' fee. The plaintiffs, like Ruffin here, had unsuccessfully sought far more remedies through the litigation. However, their limited judicial "success" resulted in only a minor or nominal change. Thus, while Hewitt and Rhodes may represent the clearest examples, they do not represent the exclusive remedial circumstances where an attorneys' fee should be denied. The Eleventh Circuit decision in Ruffin

necessarily rejects both principles from Court's Garland decision.

2. The Eleventh Circuit's Application of Garland Conflicts With Other Appeals Courts' Decisions.

In Ruffin, the existence of a defendant's remedial obligation vel non, satisfied the Appeals Court's interpretation of Garland's requirement for a material alteration. In contrast, other appeals courts have correctly applied Garland to reject certain plaintiffs as prevailing parties where their victories were found to be only technical or de minimis under Garland.

Examples of correctly decided decisions include notable damage awards which, when juxtaposed with the actual remedial goals each plaintiff sought through litigation, were judged to be insufficient under Garland. For example, in Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co., 924 F.2d 633, 641-42 n.11 (7th Cir. 1991), a plaintiff's recovery of $45,000 was held to be de

minimis in light of his claim for more than $5 million. Similarly, the First Circuit in Lewis v. Kendrick, 944 F.2d 949, 954-56 (1st Cir. 1991), recognized that a jury verdict of $1,000 was only a technical and de minimis victory because the plaintiff had sought $300,000. Likewise, the Fifth Circuit recognized that nominal damages of $1.00 was insufficient under Garland to qualify a plaintiff as a prevailing party where 17 million dollars had been sought. Estate of Farrar v. Cain, 941 F.2d 1311 (5th Cir. 1991), cert. granted, ___ U.S. ___, 112 S. Ct. 1159 (1992).

Other circuit courts have similarly denied prevailing party status in cases not involving monetary awards. For example, in Christopher P. v. Marcus, 915 F.2d 794 (2nd Cir. 1990), cert. denied, 111 S. Ct. 1081 (1991), the plaintiff obtained temporary injunctive relief which effectively placed him back in the school which was a primary goal of his lawsuit. However, after analyzing the Garland requirements, the plaintiff was found not to be a

"prevailing party." Id. at 805. Similarly, in Slade v. United States Postal Service, 952 F.2d 357, 361-62 (10th Cir. 1991), the Tenth Circuit concluded that plaintiff was not a prevailing party although he had obtained the important right to be evaluated in his employment based on nondiscriminatory criteria.

The First Circuit has also demonstrated the proper application of Garland by rejecting an attorneys' fee for a plaintiff who had "won" only nominal nonmonetary relief. In Langton v. Johnston, 928 F.2d 1206, 1226 (1st Cir. 1991), the plaintiff had failed on many issues in a case involving prisoner rights. However, he had achieved success on a single issue involving the defendants' practice of "double bunking" inmates. The appeals court held he should not be awarded an attorneys' fee if that issue was of only minor significance:

> And if, indeed, the double-bunking point was of "minor significance" given the scope and tenor of the litigation as a whole, legal

> services rendered in respect to it would not be compensable. See Texas Teachers, 489 U.S. at 792, 109 S. Ct. at 1493.

Id.

These other appeals courts have properly concluded that certain judicial remedies, although greater than the unique situations represented by Hewitt and Rhodes, did not materially alter the litigants' relationships as required by Garland. The Eleventh Circuit's Ruffin decision stands in stark contrast to this array of appeals court decisions which have properly applied Garland to deny attorneys' fees to plaintiffs who succeeded only in a minor or technical sense.

The Eleventh Circuit's departure from the results in these comparable cases is significant beyond the inconsistency itself. Garland's requirements cannot be reduced to a mechanical determination of whether or not an enforcement proceeding is available. Indeed, if the Eleventh Circuit's cursory analysis is allowed to determine

prevailing party status, this Court's consistent analysis in Hensley, Hewitt, Rhodes, and particularly Garland, was unnecessary for resolving attorneys' fee disputes. This Court should resolve the Ruffin decision's conflict with other circuit courts' proper application of Garland.

3. This Court's Decision To Grant Certiorari In Estate of Farrar v. Hobbey, 941 F.2d 1311 (5th Cir. 1991), cert. granted, ___ U.S. ___, 112 S. Ct. 1159 (1992), Confirms The Importance Of Resolving This Case Under A Proper Interpretation Of Garland.

Granting this Petition provides this Court with an excellent opportunity to fully clarify Garland's proper application when a trial court orders only nominal relief. This case presents essentially the same issue accepted for review in the Hobbey decision; i.e., whether a plaintiff's success in litigation which results in only a minimal remedy justifies an award of an attorneys' fee. In Hobbey the sole relief obtained was a monetary judgment for nominal damages; here, the sole relief obtained was a

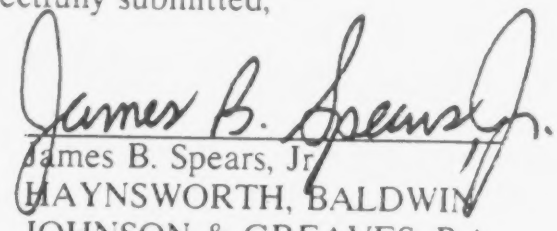
nominal injunction. The judicial character of the relief should not alter the critical determination of whether any minimal judicial relief constitutes a technical or de minimis victory under Garland. Thus, this case should be reviewed along with Hobbey.

Here the Trial Court correctly determined that its nominal injunction failed to qualify Ruffin for an attorneys' fee award. The Eleventh Circuit's mechanical reasoning for reversing the lower court represents a misguided approach which should not remain unresolved by this Court. The Eleventh Circuit's erroneous analysis in this case, not present in Hobbey, strongly supports a need to fully clarify this Court's Garland criteria so that lower courts can properly resolve attorneys' fee disputes when only nominal injunctive relief is awarded.

CONCLUSION

The decision of the Eleventh Circuit in Ruffin represents an erroneous and distorted application of Garland which should be reviewed and reversed by this Court.

Respectfully submitted,

By: 

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